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9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT TACOMA

12 BILLY WAYNE RICHMOND,

13 Plaintiff,

14 v.

15 JEFF UTTECHT,

16 Defendant,

Case No. C08-5571FDB

REPORT AND
RECOMMENDATION

17 NOTED FOR:
18 DECEMBER 5, 2008

19 This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge
20 pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrate Judges' Rules MJR 1, MJR
21 3, and MJR 4. Before the court is plaintiffs' proposed complaint (Dkt. # 1). In the relief section of the
22 complaint Mr. Richmond asks the court to dismiss this action "as if it never happened." (Dkt. # 1).

23 The court recommends the action be dismissed pursuant to Fed. R. Civ. P 41 (a)(1).

24 FACTS

25 In the statement of the claim section of the complaint Mr. Richmond states:

26 you The court are Specialley[sic] and Specifically correct. Although I have been filing
27 on this case in your court every since 2001.

28 Besides I was forced to retreat by Prison officials at Washington State Penitentiary In
Walla Walla WA 99362 Law Suit. The official told me to drop the Law Suit. So I had to find a
way to make an excuse for to stop the Claim against (ISRB) of case 420 hearing, Because I

1 already know that the United States District Court Magistrate [Judge] and Chief Would of been
2 in the Indeterminate Sentence Review Board Members case. for example just like the (Dyers
3 Case) that have been filed against the (ISRB) and Washington State Supreme Court was in
4 favor of The Inderteminate [sic] Sentence Review Board. and now the inmate Dyers, His case
is in the United States Supreme Court. So I am going to give it a try to forward my case to the
Smaller Courts and the Washington State Supreme Court and then go further. Thank you all
very much. You all done what you could in listening to me. Sorry you all could not help me.

5 (Dkt. # 1, Statement of the claim in proposed complaint). In the relief section of the proposed complaint Mr.
6 Richmond states:

7 Close this case as if it never happened, Much obliged to you and Ms. Honorable Karen
8 L. Strombom, + Thank you Mr. J. Kelly Arnold: very so much. In trying to help a person that
know nothing about law. Thank you all.

9 (Dkt. # 1, Relief requested in proposed complaint).

10 DISCUSSION

11 The complaint fails to state any claim the court can decipher. Mr. Richmond is wise to dismiss the
12 action on his own motion and thus avoid the court imposing a strike pursuant to 42 U.S.C. 1915 (g).

13 Fed. R. Civ. P. 41 (a)(1) allows a plaintiff to dismiss his action by simply filing a notice of dismissal
14 at any time prior to service of an answer or motion for summary judgment. No answer or motion for
15 summary judgment have been filed in this case and dismissal on plaintiffs' request is proper.

16 CONCLUSION

17 The court should **DISMISS** this action **WITHOUT PREJUDICE**.

18 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the
19 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ.
20 P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v.
21 Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to
22 set the matter for consideration on **December 5, 2008**, as noted in the caption.

23
24 DATED this 14 day of November, 2008.

25
26 /S/ J. Kelley Arnold
J. Kelley Arnold
27 United States Magistrate Judge
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